

HOUSE No. 4919

Section 264 contained in the engrossed Bill making appropriations for the fiscal year 2005 (see House, No. 4850), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment T of House, No. 4901). June 28, 2004.

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The Commonwealth of Massachusetts

In the Year Two Thousand Four

An Act relative to the Uncompensated Care Trust Fund.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to administer forthwith the uncompensated care trust fund, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2005, the division of health care finance and policy is authorized to administer, as provided in this section, the Uncompensated Care Trust Fund established by section 18 of chapter 118G of the General Laws, to collect assessments as specified in section 1 of said chapter 118G for deposit to the fund, and make certain payments to acute hospitals and community health centers from the uncompensated care pool to offset

the costs of services provided to uninsured residents. The division and the division of medical assistance may promulgate regulations to implement any of the provisions in this section.

The division, in consultation with the division of medical assistance and the executive office of health and human services, shall ensure that assessment liability to the fund and payments from the uncompensated care pool are structured in a manner that would secure for the General Fund the maximum allowable federal reimbursement under Title XIX, XXI or any successor federal statute.

In hospital fiscal year 2005, the total liability of all acute care hospitals to the fund shall be \$160,000,000 and the division of health care finance and policy shall calculate an assessment percentage rate by dividing \$160,000,000 by the projected annual aggregate private sector charges in the fiscal year for all acute care hospitals. Each acute care hospital's liability to the fund shall be equal to the product of the percentage rate and its "private sector charges".

In hospital fiscal year 2005, the total surcharge liability of surcharge payers to the uncompensated care trust fund shall be \$160,000,000. The surcharge amount for each surcharge payer shall be equal to the product of (a) the surcharge percentage and (b) amounts paid for services of an acute hospital or ambulatory surgical center by each surcharge payer. The division of health care finance and policy shall calculate the surcharge percentage by dividing \$160,000,000 by the projected annual aggregate "payments subject to surcharge", as that phrase is defined in section 1 of chapter 118G of the General Laws.

All title XIX federal financial participation revenue generated by hospital

payments funded by the Uncompensated Care Trust Fund, whether the payments are made by the division of health care finance and policy or the division of medical assistance, shall be credited to the General Fund; provided however, that for fiscal year 2005, the comptroller shall transfer to the Uncompensated Care Trust Fund \$208,000,000 of the federal financial participation credited to the General Fund.

All hospital payments made pursuant to this section are subject to federal approval and conditioned on the receipt of full federal financial participation. All such payments shall be established in accordance with Title XIX of the Social Security Act, or any successor federal statute, any regulations promulgated thereunder and the commonwealth's Title XIX state plan; provided, that the division, in consultation with the division of medical assistance, the executive office of health and human services, the Massachusetts Hospital Association, and representatives of acute care hospitals, shall ensure that all funding for hospital payments made pursuant to this section through disproportionate share payments or Title XIX services rate adjustment payments, shall qualify for federal financial participation.

The division of health care finance and policy shall calculate an annual payment liability from the uncompensated care pool to each acute hospital for fiscal year 2005. In determining the liability amount, the division shall (a) (1) calculate each hospital's actual free care cost for the 12 month period from May 2003 to April 2004 by using each hospital's actual submitted free care charges to the division of health care finance and policy on UC-03 and UC-04 times their ratio of cost to charge for pool fiscal year 2003 and pool fiscal year 2004; (2) project each hospital's free care costs above for the period from May 2003 to September 2003 to May 2004 to September 2004 using a 14 per cent

cost and volume growth inflation factor; (3) project each hospital's total pool fiscal year 2004 free care costs by adding actual hospital's free care cost for October 2003 to April 2004 from subclause (1) to the projected hospital's free care costs for May 2004 to September 2004 from subclause (2); (4) project each hospital's total free care costs for pool fiscal year 2004 by multiplying the hospital's pool fiscal year 2004 projected free care costs from subclause (3) by a cost and volume inflation factor of 8 per cent; and (5) take into account such factors as the financial burden of hospitals that provide proportionately the largest volume of free care and the situation of any free-standing pediatric hospital with a disproportionately low volume of Title XVIII payments; and (b) allocate the available funds in a manner that pays to each hospital a fixed percentage of its projected free care costs for hospital fiscal year 2005, as determined by the division using prior year data and considering the total funds available for the purpose; provided that the fixed percentage shall not be less than 85 per cent of free care costs as defined in section 1 of chapter 118G of the General Laws for the 2 disproportionate share hospitals with the highest relative volume of free care costs in hospital fiscal year 2002, and not less than 88 per cent of free care costs, as defined under said section 1 of said chapter 118G, for the 14 acute hospitals with the next highest relative volume of free care costs in said year; provided further that in order to identify said 16 hospitals, the division shall rank all hospitals based on the percentage of each hospital's free care costs divided by the total free care costs of all hospitals in the commonwealth. In addition to those 14 disproportionate share hospitals, a teaching hospital located in Hampden county with high Medicaid utilization shall receive not less than 88 per cent of its free care costs reimbursed and a community hospital located in Norfolk county with an affiliation with a

disproportionate share financially distressed community hospital located in Suffolk county with a locked inpatient adolescent psychiatric unit shall be reimbursed not less than 88 per cent of its free care costs. All other acute hospitals shall receive the highest possible percentage of free care costs given available remaining funds. The hospital fiscal year 2005 annual liability amount to each hospital shall be funded by the trust fund; provided, that the liability may be satisfied through either a disproportionate share payment or adjustment to Title XIX service rate adjustment payment, or combination thereof, in accordance with the terms provided for in an agreement entered into by any acute hospital and the division of medical assistance. The comptroller shall transfer without further appropriation funds to the division of medical assistance for the purpose of the Title XIX service rate adjustment payments.

The division of medical assistance shall maximize the use of other federally permissible funding mechanisms available for publicly-operated hospitals and hospitals with an affiliation with a publicly-operated health care entity to reimburse up to \$70,000,000 of uncompensated care costs at the hospitals using sources distinct from the funding made available to the trust fund under this section.

The division of medical assistance shall make payments from the uncompensated care pool for services provided by community health centers to uninsured residents in accordance with the relevant provisions of chapter 118G, and regulations promulgated under chapter 118G, in effect at the end of fiscal year 2004. Said division, in consultation with the division of medical assistance, the executive office of health and human services, and interested parties representing community health centers, shall develop a plan and take whatever steps necessary to adjust any or all payments made to

community health centers for uncompensated care to be paid as Title XIX service rate adjustment payments, in accordance with Title XIX of the Social Security Acts, or any successor federal statute, any regulations promulgated thereunder. The comptroller shall transfer without further appropriation funds determined by the division of health care finance and policy to the division of medical assistance for the purpose of the Title XIX service rate adjustment payments under this section. The division of health care finance and policy shall submit a report by March 30, 2005 specifying the payments made to community health centers for uncompensated care paid as Title XIX service rate adjustment payments and the amount of federal reimbursement obtained and anticipated in hospital fiscal year 2005 from such payments. Said federal reimbursement shall be deposited to the Uncompensated Care Trust Fund and be appropriated by September 30, 2005, to be used by community health centers as provided by this paragraph and any other provider of free care.

In hospital fiscal year 2005, not less than \$5,000,000 shall be expended from the uncompensated care trust fund to fund a Pool Audit Unit within the office of the Inspector General. Said unit shall hire auditors to oversee and examine the practices in emergency rooms of all Massachusetts hospitals. Said practices shall include but not be limited to: (1) enrollment of uninsured patients into MassHealth or other available programs; (2) free care charges hospitals are making to the free care pool and whether these charges accurately represent costs incurred by uninsured patients; (3) any cost diversion or shifting to the Uncompensated Care Pool that might be occurring in hospital ERs as the result of inadequate payment from public or private payers, and (4) reporting on whether current assessments are fairly and evenly distributed per individual covered

between all types of health plans, whether such plans are Massachusetts regulated, ERISA-exempted, or self-insured plans. Said office shall promulgate regulations to carry out the provisions of this section. The inspector general's office shall submit a report to the house and senate committees on ways and means on the results of said audits no later than January 20, 2005. For the purposes of said audits, allowable free care services shall be defined pursuant to chapter 118G of the General Laws.

In hospital fiscal year 2005, \$5,000,000 shall be transferred from the uncompensated care trust fund to the division of medical assistance, in collaboration with the division of health care finance and policy, to fund the start-up costs associated with the design and implementation of a cost-neutral pilot program of primary and preventive care and disease management of chronic conditions that will reduce the costs of federally mandated emergency care and the costs otherwise charged to the uncompensated care pool. Individuals eligible for said pilot program shall include but not be limited to recipients of emergency assistance for the elderly, disabled and children, elderly residents aged 65 or older and adults under age 65 who are disabled, blind or chronically ill. The division shall report back to the house and senate committees on ways and means on the cost neutrality of the pilot program and data on anticipated savings to the Uncompensated Care Pool by December 1, 2004.

In hospital fiscal year 2005, \$500,000,000 from the trust fund shall be credited to the uncompensated care pool for payments to acute hospitals provided for herein and \$56,000,000 from the trust fund shall be credited to the pool for payments to community health centers provided for in this section; provided further, that \$28,000,000 of said \$56,000,000 payment for said community health centers, shall come from federal

financial participation monies received from said \$28,000,000 expenditure. The comptroller shall transfer, without further appropriation, \$160,000,000 from the trust fund to the division of medical assistance for the purposes of meeting payment obligations for services provided by the MassHealth Essential program.

SECTION 2. This act shall take effect on July 1, 2004.